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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,336	02/27/2002	Mark A. Olson	P67452US0 (RIID 01-58)	8239

7590 07/23/2004

ATTN: MCMR-JA (Ms. Elizabeth Arwine)  
Office of the Staff Judge Advocate  
U.S. Army Medical Research and Materiel Command  
504 Scott Street  
Fort Detrick, MD 21702-5012

EXAMINER

RAO, MANJUNATH N

ART UNIT

PAPER NUMBER

1652

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/083,336

Applicant(s)

OLSON ET AL.

Examiner

Manjunath N. Rao, Ph.D.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-5, 7, 9-10, 14-17, 24-36.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Manjunath N. Rao, Ph.D.  
Primary Examiner  
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***Advisory Action***

Claims 1-5, 7, 9-10, 14-17, 24-36 are now currently pending in this application.

Applicant's request for reconsideration filed on 6-29-04 has been considered and ENTERED. However, said amendments are still not persuasive to overcome the previous rejections for the following reasons.

Applicant's amendment to claim 14 has overcome the rejection of claims 14-17 under 35 U.S.C. 112, 1<sup>st</sup> paragraph and is therefore withdrawn.

Claims 1 and 5 are directed to SEQ ID NO:3, 5, 7 and 10. Claims drawn to these sequences, even with the "consisting of" language in the claim, read on the sequences disclosed in the references of Huston et al. (100% match to SEQ ID NO:5 and 10), Bernhard et al. (SEQ ID NO:3) and Vittetta et al. (SEQ ID NO:7). Examiner urges applicant to peruse the sequence alignments mailed along with the previous Office action. Unless and until applicant cancels the above sequences from claim 1 and 5, the previous rejections under 35 U.S.C. 102(b) and (e) apply and are maintained on claims 1-5, 7, 9-10, 14-17.

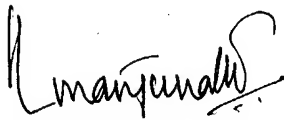
New claims 25-36 which exclude the above sequences are allowable. However, claim 25 recites the phrase "having a polypeptide sequence". Examiner has considered this phrase as indefinite as it is not clear whether it means "comprising of" or "consisting of". Examiner urges applicants to amend accordingly in order to remove the above ambiguity.

***Conclusion***

None of the claims are allowable.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Manjunath N. Rao  
Primary Examiner  
Art Unit 1652

July 22, 2004